THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 10133 of 2007

O r d e r:

The petitioner is working as LDC with the respondents-AP GENCO. Based on a complaint lodged by one V. Srinivas that the petitioner secured employment on compassionate grounds by producing false Adoption Deed dated 12.02.1995, an enquiry was initiated against the petitioner. Based on the enquiry report, the 2nd respondent, namely the Chief Engineer, issued proceedings dated 19.10.2005, calling upon the petitioner to show cause within 15 days as to why the punishment of dismissal from service shall not be imposed. Assailing the said proceedings, as illegal and arbitrary, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that the action of the respondents in initiating disciplinary proceedings against the petitioner based on a complaint lodged by a person not connected with the organization is bad. He submitted that even though the petitioner placed the required material, including the decree dated 13.08.1996, passed by the competent Civil Court in O.S. No. 103/1996, before the Enquiry Officer to show that he was legally adopted, and that he had not played any fraud in securing employment, yet the Enquiry Officer has come to a perverse conclusion that the petitioner had secured employment by producing a fabricated Adoption Deed. He further submitted that neither the complainant was examined nor his mother nor the persons who are witnesses to the Adoption Deed was examined by the Enquiry Officer, and as such, the enquiry itself is vitiated. In support of his contention that non-examination of the

complainant and other material witnesses, vitiates the proceedings, he placed reliance on the judgment of the apex Court in **Hardwari Lal v. State of U.P.**[1]. He thus submitted that the action of the 2nd respondent in issuing the impugned proceedings, to show cause with regard to the punishment proposed to be imposed, based on the enquiry report, is illegal and arbitrary, and prayed that the same be set aside and the writ petition be allowed.

On the other hand, the learned Standing Counsel for the respondents-AP GENCO submitted that as of now no punishment has been imposed against the petitioner, and as such, no cause of action has arisen for the petitioner to file the present writ petition, which is premature. The impugned proceedings, is merely a show cause notice calling upon the petitioner to show cause as to why the punishment of dismissal from service should not be imposed. He submitted that after taking into consideration the explanation that may be submitted by the petitioner, appropriate orders would be passed, and even if an order of dismissal is passed against the petitioner, the same would not be implemented, unless the same is ratified by the Consensus Committee. Therefore, at this stage, the facts cannot be gone into, and prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-AP GENCO.

As can be seen from the impugned proceedings, the same came to be issued based on an enquiry report submitted by the Enquiry Officer conducted against the petitioner. The enquiry, which the respondents contend was conducted following the principles of natural justice, held that the petitioner obtained employment on compassionate grounds by producing false Adoption Deed. Though the petitioner contends that the complainant and material witnesses

are not examined, and as such, the enquiry proceedings itself are vitiated, the fact remains, the impugned proceedings merely calls upon the petitioner to show cause as to why the punishment of dismissal from service should not be imposed. The impugned proceedings, in fact, provides an opportunity to put forth his defence against the punishment proposed to be imposed. The petitioner is at liberty to take the grounds, which he sought to take in the present writ petition, in the explanation which he is called upon to submit under the impugned proceedings. It is not as if the respondents would pass an order of dismissal from service without considering the explanation of the petitioner. If the petitioner makes out a case against imposition of the punishment proposed in his explanation, certainly the respondents would refrain from imposing the punishment proposed, but the petitioner, without submitting his explanation to the show cause notice, has filed the present writ petition, which cannot be entertained. Reliance placed by the learned counsel for the petitioner on the judgment of the apex Court in **Hardwari Lal v. State of U.P.**, in support of his contention that since the complainant and the material witnesses are not examined, the enquiry proceedings are vitiated, is of no assistance to him, for in the said case, the disciplinary authority directly based on the enquiry report, passed order of dismissal from service, but that is not the case on hand. In the instant case, before seeking to impose the punishment proposed, the respondents sought to call for an explanation, which he is at liberty to submit taking appropriate defence. This apart, if any adverse order is passed by the respondents upon considering his explanation, the petitioner is always at liberty to assail the same in appropriate proceedings.

In the above view of the matter, I find no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Dated: 20th July, 2007.
KSR

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[1] 2000 SCC (L&S) 85